IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21/09/2004

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A No.370 of 2001
and
W.A.M.P.No.2802 of 2001

1. Tamil Nadu Electricity Board,
Rep. by its Chairman,
No.800, Anna Salai, Chennai-2.

2. The Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2. ... Appellants

-vs-

S.Thanickachalam ... Respondent

Prayer:- Appeal against the order of this Court dated 29.11.2000 in W.P.No.9672 of 1995.

!For Appellants : Mr.V.Radhakrishnan

^For Respondent : Mr.S.Elamurugan

:J U D G M E N T

(Judgment of the Court was delivered by
F.M.IBRAHIM KALIFULLA,J.)

The Tamil Nadu Electricity Board is the appellant before us.
The challenge is to the order of the learned Judge dated 29.11.2000 in W. P.No.9672 of 1995, wherein the learned Judge while setting aside the order of the appellant-Board dated 29.6.1995 insofar as it denied the backwages to the respondent for the period between 16.10.1982 and 29.6.1995, directed the appellant-Board to pay the said backwages within a period of eight weeks. The appeal centers around the question as to whether the respondent is entitled for full backwages for the said period.

2. For the purpose of disposal of this appeal, a few facts are required to be stated. The respondent, who was working as Assistant Executive Engineer, was issued with a charge memo dated 8.3.1983 alleging that he unauthorizedly absented himself from 16.10.1982 onwards. Pursuant to the said charge memo and after holding an enquiry, he was dismissed by the order of the Full Board dated 29.6.1984. The said order was challenged by the respondent in W.P.No.9843 of 1984. The said writ petition was allowed on 16.12.1994 wherein the learned Judge held as under in paragraphs 5 and 6 :

" 5. ..... In this case, there is no delegation of powers by the Board or authorisation by the Board to General Superintendent to initiate enquiry and frame charges. Hence, the entire enquiry is vitiated. The proceedings against the petitioner are therefore quashed. The order dated 29.6.1984 passed in B.P.Ms.(FB) No.66 (Administrative Branch), is also quashed.

6. It is certainly open to the respondents to initiate fresh enquiry in accordance with the rules and regulations in the manner prescribed subject to rules of limitation, if any. The writ petition is allowed. No costs."

After the passing of the above said order dated 16.12.1994, the appellant-Board passed fresh orders only on 29.6.1995 wherein while reinstating the respondent, the appellant-Board made it clear that he will not be entitled for any backwages. Simultaneously, by a separate order of the same date, the respondent was also placed under suspension. Mr.V.Radhakrishnan, learned counsel appearing for the appellantBoard states that the said suspension order was subsequently revoked and that the respondent, after serving the Board, also retired from service. It is also relevant to mention that subsequent to the reinstatement, a fresh charge memo was issued to the respondent, which is stated to be the subject matter of challenge in W.P.Nos.3355 and 3356 of 1997. It is in the above said background, by the impugned order, the learned Judge has granted full backwages for the period between 16.1 0.1982 and 29.6.1995.

3. While assailing the above said order, Mr.V.Radhakrishnan, learned standing counsel for the appellant-Board, drew our attention to Regulation 57-A of the Tamil Nadu Electricity Service Regulations as well as Regulations 8(b) and 9 of the Tamil Nadu Electricity board Employees Discipline and Appeal Regulations. Mr.S.Elamurugan, learned counsel appearing for the respondent also relies upon the above said regulations for the purpose of deciding the issue involved. Therefore, the whole controversy depends upon the interpretation of the above said regulations.

4. For better appreciation, Regulations 8(b) and 9(d) and 9(dd) of the Tamil Nadu Electricity Board Discipline and Appeal Regulations and Regulation 57 (7) and 57-A (2) (i) of the Tamil Nadu Electricity Board Service Regulations are extracted below:

Tamil Nadu Electricity Board Discipline and Appeal Regulations:-

8(b) (i) - In every case where it is proposed to impose on an employee any of the penalties in items (iii), (v), (vi) and (vii) in regulation 5, he shall be

given a charge sheet setting forth the grounds on which it is proposed to take action and any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required to answer the charge or charges in a written statement within a reasonable time not exceeding one month and also to state whether he desires an oral enquiry or to be heard in person or both. An oral enquiry shall be held if the employee desires such inquiry, or if so directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and whcih can be proved only through the evidence of witnesses. At that inquiry, oral evidence shall be heard as to such of those allegations as are not admitted. The employee shall be permitted to produce witness in his defence and cross examine any witness on whose evidence the charge rests. The officer conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The enquiring officer shall ask, in writing the delinquent employee immediately after the enquiry is over, whether he had a reasonable opportunity of presenting his case or if he has any complaint in this regard. If there is any complaint in this regard, the enquiring officer will examine the complaints and set right the matter. If it is considered that the alleged denial of reasonable opportunity is made with a view to delay the disciplinary proceedings, the enquiring officer will be competent to ignore the complaint and the reasons for not complying with the request should be recorded. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, a further written statement of his defence, whether or not the person charged desired or had an oral enquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the enquiry or personal hearing (as the case may be) shall be prepared by the authority holding the enquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof.

(ii) If the Board employee to whom a copy of the charges together with a statement of the allegation on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case, is communicated, does not submit the written statement of his defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this regulation, the inquiring authority may hold the inquiry exparte.

(iii) After the enquiry or personal hearing referred to in this clause has been completed, and if the authority competent to impose the penalty is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in Regulation 5 should be imposed on the person charged, it shall before making an order imposing such penalty furnish to him a copy of the report of the inquiry or personal hearing or both as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making

any order imposing the penalty provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed.

9(d) - Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee of the Board is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal/removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

9(dd) - Where a Board employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and if any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the board employee shall continue to be under suspension until the termination of all or any such proceedings.

Tamil Nadu Electricity Board Service Regulations :

57 (7) - The amount determined under the proviso to Sub-Regulation (2) or under sub-regulation (4) shall not be less than the subsistence allowance and other allowances admissible under Regulation 56.

57-A (2) (i) - Where the dismissal, removal or compulsory retirement of an employee is set aside by the Court solely on the ground of non-compliance with the requirements of the provisions in Regulation 8 (b) of Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations, and where he is not exonerated on merits, the employee shall, subject to the provisions of sub-regulation (7) of Regulation 5 7, be paid such amount (not being the whole) of the pay and allowance to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the employee of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

Provided that any payment under this sub-regulation to an employee shall be restricted to a period of three years immediately preceding the date on which the judgment of the court was passed, or the date of retirement on superannuation of such employee, as the case may be.

5. A reading of the above referred to Tamil Nadu Electricity Board Discipline and Appeal Regulations and Service Regulations boils down to the position that in the event of an order of dismissal of an employee is rendered void or declared as an unjustified one on the ground of violation of certain regulations, but not on the merits of the concerned mis-conduct by the Court, then under Regulation 9(d), the concerned employee should be deemed to have been under suspension by the appointing authority from the date of the original order of dismissal and continue to remain under suspension until further orders. Under Regulation 57-A(2)(i), in such a situation, what is the quantum of the payment to be made has been stated. Therefore, application of Regulation 9(d) along with Regulation 57-A(2)(i) would empower the appellant-Board to pass appropriate orders in accordance with the above said regulations by determining the quantum of the payment to be made to the employee concerned.

6. Under Regulation 57-A(2)(i), it is specifically provided that the determination of such quantum will be subject to the provisions of sub-regulation 7 of Regulation 57. Under sub-regulation 7 of Regulation 57, it is specifically provided that the amount determined under the proviso to sub-regulation 2 or sub-regulation 4 should not be less than the subsistence allowance and other allowances admissible under Regulation 56. Regulation 56 provides the rate at which the subsistence allowance should be paid to an employee, who is placed under suspension. Therefore, a conspectus reading of Regulation 9(d) along with Regulation 57-A(2)(i) makes it clear that while under Regulation 9(d), an employee whose dismissal has been declared to be void in the sense that irrespective of the merits of the charges levelled against him, the order was liable to be set aside, then he should be deemed to have been placed under suspension from the date of dismissal till such order was set aside and he will continue to remain under suspension until further orders. In the case on hand, the respondent, who was dismissed from service with effect from 16.10.1982 by the order dated 29.6.1984, by virtue of the order of this Court dated 16.12.1994 in W.P.No.9843 of 1984 wherein the order of dismissal was set aside, should be deemed to have been placed under suspension with effect from 16.10.1982 till fresh orders are passed. Fresh orders were passed by the appellant-Board only on 29.6.1995, in which the respondent was directed to be reinstated though without backwages. Therefore, the deemed suspension under Regulation 9(d) was to operate between 16.10 .1982 till 29.6.1995 when the Board passed orders reinstating the respondent into service.

7. Consequently, application of Regulation 57-A(2)(i) along with its proviso comes into play. By virtue of the said regulation, determination of the quantum of amount payable to the respondent for the above said period ought to have been made by the appellant-Board. In fact, under Regulation 57-A(2)(i), it is stipulated that such determination should have been made within 60 days from the date on which notice is served on the respondent. Unfortunately, the appellant-Board had not initiated any such notice under the said regulation. In the circumstances, it will have to be held that the proviso to Regulation 57-A(2)(i) gets attracted under which there should be a payment, which, in any case, should be restricted to a period of three years immediately preceding the date on which the judgment of

the Court was passed. Therefore, we are of the confirmed view that as per Regulation 57(7) read along with 57-A(2)(i) of the Tamil Nadu Electricity Board Service Regulations as well as Regulation 9(d) of the Discipline and Appeal Regulations, having regard to the pe riod which is to be covered for determining the amount, the appellant-Board should pass orders determining the quantum of amount payable to the respondent.

8. We, therefore, feel it appropriate to direct the appellant to determine the amount payable by applying the above said regulations for the period in question by adding 3 % interest from 29.6.1995 onwards till the period such quantum is arrived at and proposed by the appellant-Board and issue such a proposal to the respondent. The appellant-Board shall issue such a notice to the respondent within two months from the date of receipt of a copy of this order and after the receipt of the respondent's reply within two weeks from the date of issuance of such proposal by the appellant-Board, pass final orders determining the quantum within one month from the date of receipt of the reply. The writ appeal is disposed of on the above terms. No costs. Consequently, C.M.P.No.2802 of 2001 is closed. It goes without saying that the period of deemed suspension of the respondent should be treated as period of service for all other purposes.

Index: Yes

Internet: Yes

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To

1. Tamil Nadu Electricity Board,
Rep. by its Chairman,
No.800, Anna Salai, Chennai-2.

2. The Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2.

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